

SENATE BILL No. 575

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-9-8-1; IC 14-21-1; IC 14-22-40-5; IC 23-14-57-4.

Synopsis: Archaeology. Defines "artifact" as a human made feature or object that is at least 125 years old. Requires certain utility companies to have a development plan (plan). Requires a plan before excavating or covering ground within 100 feet of a cemetery or burial ground. Requires a person who disturbs buried human remains or artifacts to cease disturbing the area within 100 feet of the remains or artifacts. Establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. Allows confidentiality of location information of historical or archeological sites. Allows certain persons to accompany a conservation officer to investigate a violation of a historic preservation and archeology law. Establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with a plan. Allows the court to order restitution for certain costs related to the violation of the historic preservation and archeology law. Establishes a Class D felony for possession of looted property and a Class C felony if the property is worth more than \$100,000. Provides that a disinterment under a plan is exempt from other disinterment procedures. Establishes the historic and archeological site data base advisory task force. Makes conforming changes. Repeals chapter definition of "conservation officer" and applies the definition throughout the natural resources title. (The introduced version of this bill was prepared by the natural resources study committee.)

Effective: Upon passage; July 1, 2005.

Merritt, Simpson

January 20, 2005, read first time and referred to Committee on Natural Resources.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 575

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-53 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 53. "Conservation
3 officer" for purposes of IC 14-9-8; has the meaning set forth in
4 IC 14-9-8-1: **refers to an officer employee of the law enforcement**
5 **division.**

6 SECTION 2. IC 14-8-2-87.9 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2005]: **Sec. 87.9. "Feature", for purposes of IC 14-21-1, has the**
9 **meaning set forth in IC 14-21-1-6.5.**

10 SECTION 3. IC 14-21-1-2 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this
12 chapter, "artifact" means:

13 (1) **a feature; or**
14 (2) **an object made or shaped by human workmanship; before**
15 **December 11, 1816;**
16 **that is at least one hundred twenty-five (125) years old.**

17 SECTION 4. IC 14-21-1-6.5 IS ADDED TO THE INDIANA CODE



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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6.5. (a) As used in this chapter, "feature" means nonportable evidence of past human behavior, activity, or technology that is found on or in the ground.**

(b) The term includes structural remains, petroglyphs, pictographs, fire pits and hearths, middens, and storage pits.

SECTION 5. IC 14-21-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this chapter, "plan" refers to:

(1) an archeological plan, as described in subsection (b); or

(2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means a plan for the:

(1) erection, alteration, or repair of any structure; or

(2) excavation of ground.

SECTION 6. IC 14-21-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

(1) ~~A public~~ **An emergency repair by a public utility (as defined in IC 8-1-2-1(a)): company regulated under IC 8.**

(2) ~~A corporation organized under IC 8-1-13:~~

(3) ~~A municipally owned utility (as defined in IC 8-1-2-1(h)):~~

~~(4)~~ **(2) A surface coal mining and reclamation operation permitted under IC 14-34.**

Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of a burial ground or cemetery for the purpose of **excavating or covering over the ground or** erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

(1) must be approved if a person intends to **excavate or cover over the ground**, construct a new structure, or alter or repair an existing structure that would significantly impact the burial

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ground or cemetery; and

(2) is not required if a person intends to **excavate or cover over the ground or** erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(d) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 7. IC 14-21-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) A person who disturbs buried human remains shall do the following:

(1) Immediately cease disturbing the human remains and the area within one hundred (100) feet of the human remains.

(2) Notify the department within two (2) business days of the time of the disturbance.

(3) Refrain from covering over the human remains.

(4) Submit a development plan to the department under

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section 26.5 of this chapter.

~~(2)~~ **(5)** Treat or reburial the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

SECTION 8. IC 14-21-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) A person who discovers an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects shall do the following:

(1) Immediately cease disturbing the ground **and the area within one hundred (100) feet of the artifact or burial object.**

(2) Refrain from covering over the artifact or burial object.

~~(2)~~ **(3)** Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a) the department may do any of the following:

(1) Authorize the person to continue the ground disturbing activity, with or without conditions.

(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after thirty (30) days from the date that the department receives notice.

(c) A person who violates subsection (a) commits a Class A infraction.

SECTION 9. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. **(a) Except as provided in subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:**

(1) risk harm to the historic or archeological site;

(2) cause a significant invasion of privacy; or

(3) impede the use of a traditional religious site by practitioners.

(b) The division may not disclose reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the

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1 division, shall determine who may have access to the confidential
2 reports and information.

3 SECTION 10. IC 14-21-1-33 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2005]: **Sec. 33. An employee of the division**
6 **or a person authorized by the department may accompany a**
7 **conservation officer on public or private property to determine if**
8 **there is a violation of this article.**

9 SECTION 11. IC 14-21-1-34 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2005]: **Sec. 34. (a) The division may conduct**
12 **a program to assist private homeowners who have accidentally**
13 **discovered an artifact, a burial object, or human remains and who**
14 **need assistance to comply with an approved plan to excavate or**
15 **secure the site from further disturbance. The division may conduct**
16 **the program alone or by entering into an agreement with one (1)**
17 **or more of the following entities:**

18 (1) The Indiana historical society established under IC 23-6-3.

19 (2) A historical society (as defined in IC 20-5-17.5-1(a)).

20 (3) The Historic Landmarks Foundation of Indiana.

21 (4) A professional archeologist or historian associated with a
22 college or university.

23 (5) Any other entity that the division selects.

24 (b) In conducting a program under subsection (a), the division
25 may receive gifts and grants under terms, obligations, and
26 liabilities that the director of the division considers appropriate.
27 The director shall use a gift or grant received under this
28 subsection:

29 (1) to carry out subsection (a); and

30 (2) according to the terms and obligations of the gift or grant.

31 (c) The auditor of state shall establish the archeology
32 preservation trust fund for purposes of holding money received
33 under subsection (b).

34 (d) The director of the division shall administer the archeology
35 preservation trust fund established by subsection (c). The expenses
36 of administering the archeology preservation trust fund shall be
37 paid from money in the trust fund.

38 (e) The treasurer of state shall invest the money in the
39 archeology preservation trust fund established by subsection (c)
40 that is not currently needed to meet the obligations of the trust
41 fund in the same manner as other public trust funds may be
42 invested. The treasurer of state shall deposit in the archeology

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1 preservation trust fund the interest that accrues from the
2 investment of the trust fund.

3 (f) Money in the archeology preservation trust fund at the end
4 of a state fiscal year does not revert to the state general fund.
5 There is annually appropriated to the division the money in the
6 archeology preservation trust fund for the division's use in
7 carrying out the purposes of this section.

8 (g) The division may adopt rules to govern the administration
9 of this section.

10 SECTION 12. IC 14-21-1-35 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) In addition to:

13 (1) a:

14 (A) sentence imposed under this chapter for a felony or
15 misdemeanor; or

16 (B) judgment imposed under this chapter for an infraction;
17 and

18 (2) an order for restitution to a victim;

19 the court may order an individual to make restitution to the
20 archeology preservation trust fund under section 34 of this chapter
21 for the division's cost necessitated because of the offense committed
22 by the individual.

23 (b) In ordering restitution under this section, the court shall
24 consider the following:

25 (1) The schedule of costs submitted to the court by the
26 division.

27 (2) The amount of restitution that the individual is or will be
28 able to pay.

29 (c) The court shall immediately forward a copy of an order for
30 restitution made under this section to the division.

31 SECTION 13. IC 14-21-1-36 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2005]: Sec. 36. A person who knowingly or
34 intentionally receives, retains, or disposes of an artifact, a burial
35 object, or human remains that have been obtained in violation of
36 this chapter commits possession of looted property, a Class D
37 felony. However, the offense is a Class C felony if the fair market
38 value of the property is at least one hundred thousand dollars
39 (\$100,000).

40 SECTION 14. IC 14-22-40-5 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. As used in this
42 chapter, "law enforcement officer" has the meaning set forth in

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1 IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in~~
 2 ~~IC 14-9-8-1).~~

3 SECTION 15. IC 23-14-57-4 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. This chapter does not
 5 apply to the **following**:

6 **(1) The** disinterment, disentombment, or disurnment of remains
 7 upon the written order of the coroner of the county in which the
 8 cemetery is situated.

9 **(2) The removal of human remains under a plan approved by**
 10 **the division of historic preservation and archeology under**
 11 **IC 14-21-1.**

12 SECTION 16. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1,
 13 2005].

14 SECTION 17. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
 15 **SECTION, "department" refers to the department of natural**
 16 **resources.**

17 **(b) As used in this SECTION "task force" refers to the historic**
 18 **and archeological site data base advisory task force established by**
 19 **subsection (c).**

20 **(c) The historic and archeological site data base advisory task**
 21 **force is established.**

22 **(d) The task force consists of the following individuals:**

23 **(1) The director of the department or the director's designee,**
 24 **who shall serve as the chairperson of the task force.**

25 **(2) The state archeologist or the state archeologist's designee.**

26 **(3) The state geologist of the Indiana geological survey or the**
 27 **state geologist's designee.**

28 **(4) The commissioner of the Indiana department of**
 29 **transportation or the commissioner's designee.**

30 **(5) Three (3) individuals, appointed by the director of the**
 31 **department, from Indiana universities or colleges who have**
 32 **expertise in geographic information systems, public**
 33 **information technology, information management, or other**
 34 **similar expertise.**

35 **(6) Three (3) individuals, appointed by the director of the**
 36 **department, who are archeologists with experience in**
 37 **archeology in Indiana.**

38 **(e) The task force shall advise the department on the creation of**
 39 **an integrated data base of historic and archeological sites,**
 40 **including cemeteries and burial grounds (as defined in**
 41 **IC 14-21-1-3) and associated documentation. The data base must**
 42 **be designed to include the following:**

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- 1 (1) Site record forms.
- 2 (2) Reports of investigation.
- 3 (3) Accidental site discovery summaries.
- 4 (4) Site location data.
- 5 (5) Location data for areas of previous investigation.
- 6 (6) United States Geological Survey topographical map data.
- 7 (7) Other documents and information that the task force
- 8 determines is relevant.
- 9 (f) The task force shall investigate the following:
- 10 (1) Ways the data base under subsection (e) can be developed
- 11 and operated in collaboration with universities and other state
- 12 entities.
- 13 (2) Ways to limit access to certain information in the data
- 14 base to prevent:
- 15 (A) damage, looting, or destruction of a historic site; and
- 16 (B) a significant invasion of privacy to a property owner.
- 17 (g) Members of the task force are not entitled to per diem or
- 18 travel reimbursement.
- 19 (h) The department shall provide staff support for the task
- 20 force.
- 21 (i) The department shall provide the natural resources study
- 22 committee with an annual progress report concerning activities
- 23 under this SECTION.
- 24 (j) This SECTION expires July 1, 2007.
- 25 SECTION 18. An emergency is declared for this act.

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